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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No. 816

CHARLES BERSTEIN, a/k/a CHUCK BERNS,
Petitioner,

v.

STATE OF MISSOURI,
Respondent.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI.

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Petitioner prays that this Court grant rehearing of its order of March 23, 1964, denying the Petition for Writ of Certiorari, and that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of Missouri relative to petitioner's Motion to Suppress Evidence as prayed for in the Petition filed February 7, 1964, herein.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT.

As pointed out on pages 4 and 5 of the Petition for Writ of Certiorari filed herein, petitioner was arrested and the place of arrest was searched. Petitioner was then taken

to the Police station where he was booked and his personal property was placed in a property envelope. Thereafter, while petitioner was in a cell in custody, his property envelope was removed by the police and opened and his billfold taken from the envelope. The police examined the contents of the billfold and had photo copies made of certain papers that were contained in the billfold. The papers were then returned to the billfold which in turn was replaced in the property envelope and subsequently returned to petitioner when he was released from custody. At the trial, the photo copies above referred to were introduced into evidence over the objection of petitioner.

On March 23, 1964, this Court also entered its decision in **Preston v. United States**, 163—October Term, 1963. This case held that although the defendants had been arrested in their automobile, a subsequent search of that automobile, after the defendants were already in custody, was illegal and thus rendered the evidence obtained in that search inadmissible. The **Preston** case held that the search was too remote in time and place as to be considered incidental to the arrest and thus, since a search warrant was not obtained, the search was held to be illegal.

Although in the instant case an automobile is not involved, it is earnestly contended that the facts of the two cases are parallel. In both cases the object searched, namely the automobile in **Preston** and the billfold in the instant case, was no longer in the possession of the defendant and was no longer under his control. In both cases the search occurred after the defendant had been arrested and taken into custody. In the **Preston** case the automobile had been taken to a police garage and thereafter searched; in the instant case petitioner's billfold was taken from him and placed in a property envelope, and thereafter removed without Petitioner's knowledge and searched. As this Court stated in **Preston**, "Once an ac-

cused is under arrest and in custody, then a search made at another place, without a warrant, is simply not incident to the arrest."

It is earnestly contended that the decision in **Preston** which was handed down on the same day that Petitioner's Petition for Writ of Certiorari was denied, constitutes an intervening circumstance of controlling effect.

CONCLUSION.

For the reasons set forth above and in the Petition for Writ of Certiorari it is respectfully urged that rehearing be granted and that, upon such rehearing, a Writ of Certiorari issue to the Supreme Court for the State of Missouri.

Respectfully submitted,

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Attorneys for Petitioner.

Certificate of Counsel.

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and is restricted to grounds specified in Rule 58 of this Court.

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Norman S. London.